

**Senate Bill 963 (Monteith) Chapter 289**  
*Exemption for oxygen administered to food animals*

*Tax levy; effective September 1, 1999, but operative January 1, 2000. Amends  
Section 6358 of the Revenue and Taxation Code.*

**This bill includes oxygen within the exemption for sales and purchases of drugs and medicines administered to food animals in subdivision (e) of Section 6358.**

***Sponsor: California Aquaculture Association***

***Law Prior to Amendment:***

Under existing law, Section 6358 of the Sales and Use Tax Law provides a sales and use tax exemption for the sale or use of any form of animal life the kind of which ordinarily constitutes food for human consumption (food animals). The sale of a cow, for example, is exempt from tax since the products from cows ordinarily constitute food for human consumption.

In addition, the sale or use of feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption is also exempt from tax (such as alfalfa for cows), as well as feed for any form of animal life that is to be sold in the regular course of business (such as feed sold to a person in the business of raising and selling earthworms).

The sale and use of drugs or medicines administered to “food animals” is also exempt from sales and use tax when the primary purpose of those drugs or medicines is the prevention or control of disease. Through the Board’s Regulation 1587, *Animal Life, Feed, Drugs and Medicines*, drugs and medicines are defined as any “livestock” drug defined and registered pursuant to specified provisions of the California Food and Agricultural Code. “Livestock” is defined in the Food and Agricultural Code to include all animals, poultry, bees, and *aquatic* and amphibian species which are raised, kept, or used for profit. Therefore, sales of drugs and medicines (pharmaceuticals) that are administered to fish, the products of which are ordinarily food for human consumption, currently qualify for the exemption from sales and use tax in Section 6358.

Section 6358.4 also provides a sales and use tax exemption for the sale and use of drugs and medicines, the primary purpose of which is the prevention and control of disease, and administered to “food animals” or animals held for resale when the drug or medicine is administered as an additive through either their feed or water.

**Background:**

In recent years, legislation has been enacted to modify the sales and use tax laws relative to medications administered to animals. During the 1996 Session, SB 38 (Ch. 954), amended Section 6358 to incorporate an exemption for sales and purchases of drugs or medicines that are administered to “food animals” when the primary purpose is the prevention or control of disease. This exemption was sponsored by the California Cattlemen’s Association in an effort to extend the same tax treatment to the livestock industry that had been afforded to the poultry industry the year before. The poultry industry had received some relief from the sales and use tax the year before through the enactment of AB 694 (Ch.620, Stats. 1995). That measure added Section 6358.4 to the Sales and Use Tax Law to exempt sales of medicines administered to animals as additives to feed or drinking water, when the primary purpose of the medicine is the prevention and control of disease of “food animals”, or of nonfood animals which are to be resold. The livestock industry argued that, unlike poultry where medicines are administered as additives to feed or drinking water, other animals, such as cattle and sheep, are usually treated with pharmaceuticals through injections, implants, drenches, pour-ons and boluses. Now, the exemption for sales of drugs and medicine administered to poultry and livestock are parallel.

**Comments:**

1. **Purpose.** To extend the existing drug and medicine exemption for food animals to oxygen purchased for maintaining fish raised in fish farms. The author notes that fish farming is one of the fastest growing sectors of agriculture and is responsible for stocking recreational lakes, restoring impacted fisheries, and raising the only source of commercially available abalone, sturgeon, hybrid striped bass, catfish and tilapia. The author points out that oxygen is a vital element to sustain the fish and reduce stress and the onset of disease, and it should be given the same tax treatment as drugs and medicines are given in the livestock and poultry industries.
2. **Bill will not be problematic to administer.** Currently, drugs and medicines administered to fish, the products of which ordinarily constitute food for human consumption, qualify for the exemption from tax under Section 6358. This additional exemption for sales of oxygen will not materially affect the Board’s administration of the sales and use tax.